

# National Human Rights Institutions and Economic, Social and Cultural Rights: Examination of Mandate and Practice of the Ethiopian Human Rights Commission

Mohammed Abdo\*

## Introduction

Traditionally, national human rights institutions (NHRIs) have focused on monitoring civil and political rights and attempt to deal with economic, social and cultural rights (ESC rights) is perhaps the weakest part of their efforts. A specific focus on these rights is only expressly stated in the mandate of a few NHRIs. The issue is, therefore, whether NHRIs do have a mandate to enforce these rights. However, an increasing focus on the protection of ESC rights is likely to change this question. Since the World Conference on Human Rights, held in Vienna in 1993, there is a heightened interest in the protection of ESC rights. Realizing a potentially vital role NHRIs can play in enforcing ESC rights, international and regional human rights monitoring bodies, NGOs and commentators have been urging NHRIs to promote and protect these rights. Thus the issue as to whether NHRIs can be entrusted with the role of enforcing ESC rights is likely to diminish from time to time with the increasing attention given to issues of these rights, both internationally and nationally, over the last two decades.

The Human Rights Commission of Ethiopia (Commission) was set up in 2000 and started its operation only in 2004. The mandate granted to the Commission is couched in broad and general terms and does not indicate the type of human rights falling within the ambit of the Commission's competence. It is the objective of this piece to examine the provision of the law that established the Commission and determine whether the Commission is mandated to protect social and economic rights. Most importantly, it reviews the practice of the Commission to see if the Commission is enforcing these rights since it embarked on its operation. The discussion on issues raised here are based on the analysis of the relevant the provisions of the law setting up the Commission, a review of the relevant literature, and an examination of the promotional and monitoring works undertaken and cases decided by the Commission.

## 1. Establishment of the Commission

NHRIs can be established in three ways: by constitution (or amendment of constitution), by act of parliament, or by presidential decree<sup>1</sup>. The setting up of NHRIs stipulated in constitutional text is the most powerful option because it guarantees the permanence of the institutions in the sense that the amendment of a constitution involves rigorous procedures compared with other laws<sup>2</sup>. This type of establishing NHRIs is found in countries that have recently undergone

---

\* PhD Candidate, Human Rights Centre, Faculty of Law, Gent University, Belgium. Address: Universiteitstraat 6, Gent, 9000, Belgium (Academic Staff, Institute of Federalism and Legal Studies, Ethiopian Civil Service University, P.o. Box 5648, Addis Ababa, Ethiopia)

E-mail: [mohammed.mohammedabdo@UGent.be](mailto:mohammed.mohammedabdo@UGent.be)/[mohammedza@yahoo.com](mailto:mohammedza@yahoo.com)

<sup>1</sup>B. Lindsnaes and L. Lindholt, 'National Human Rights Institutions-Standard Setting and Achievements' in B. Lindsnaes, L. Lindholt and C. Yigen, eds., *National Human Rights Institutions: Articles and Working Papers*, the Danish Centre for Human Rights, 2001, p. 14

<sup>2</sup> Ibid

constitutional reforms and marked by grave human rights violations in the past<sup>3</sup>. The Commission seems to fall into this category.

The staggering increase in the number of NHRIs throughout the World dating back to the early 1990s has affected Ethiopia as well<sup>4</sup>. After a protracted armed struggle, the current ruling party, the *Ethiopian Peoples' Revolutionary Democratic Front* (EPRDF) ousted the former military regime from power in 1991. The Party managed to form the transitional government soon after assuming power. Issues of decentralization of power, democratic governance, respect for human rights, and rule of law emerged as central ones during the transitional period<sup>5</sup>. To address some of these issues, a liberal and progressive constitution that guarantee human rights and also stipulate the establishment of democratic institutions including the Commission, was finally adopted in 1994<sup>6</sup>. It is within this context that the Commission was set up, attributed largely to domestic factors. A transition from dictatorship to new era, the desire to grapple with the past atrocities, and the quest to improve human rights are among the major factors that propelled its establishment<sup>7</sup>.

On the basis of the constitutional mandate, the Ethiopian Parliament, *House of People's Representatives*, promulgated legislation establishing the Commission in 2000, Proclamation No. 210/2000 (*Proclamation*), which provides the structure, functions and powers, working procedures and administration of the Commission<sup>8</sup>. The process of enacting legislation setting up the Commission apparently involved a broad-based consultation of experts and the general public<sup>9</sup>. However, both local and international human rights NGOs were excluded from the consultation, triggering criticism by NGOs<sup>10</sup>.

The Commission embarked on discharging its function only in July 2004. The delay in appointment process of its first officials and the operation of the institution was attributed to the

---

<sup>3</sup> Ibid, pp. 14-15

<sup>4</sup> Mohammed Abdo, 'The Ethiopian Human Rights Commission: Challenges Confronting Its Effective Functioning', *Chinese Year Book of Human Rights*, Vol. 4, 2006, p. 24

<sup>5</sup> Ibid, pp. 27-28

<sup>6</sup> At least, a third of the provisions of the 1995 Federal constitution of Ethiopia are on human rights. It stipulated the establishment of democratic institutions such as the Human Rights Commission and Ombudsman under its Article 55. The Constitution made international human rights instruments ratified by the country an integral part of the law of the land and also enjoins the use of international human rights instruments in interpreting its provisions on human rights.

<sup>7</sup> This is implicit from and reflected in the document prepared, in Amharic, by the Legal Standing Committee of the *House of People's Representatives* to elaborate the draft laws to establish the Commission and the Ombudsman, 1999, p. 1

<sup>8</sup> A Proclamation to Provide for the Establishment of the Human Rights Commission, Proclamation No. 210/2000, *Federal Negarit Gazeta* No. 40, 6<sup>th</sup> Year, 4 July, 2000) (hereinafter referred to as the '*Proclamation*')

<sup>9</sup> It involved the organization of international seminar on NHRIs in the country in 1997, the conducting of national seminar of local experts on draft legislation, and a series of public discussion on it throughout the country. For details of the process in establishing the Commission see Abdo, *supra* note 4, *op. cit.*, p. 27; see also Mohammed Abdo, "Challenges Facing the New Ethiopian Ombudsman Institution", *International Ombudsman Yearbook*, Vol. 6, 2002, p. 78

<sup>10</sup> The Human Rights Watch criticized the exclusion of local and international NGOs from the whole process and described the act as a worrying matter from the early inception of the Commission. See Human Rights Watch, *Protectors or Pretenders?: Government Human Rights Commissions in Africa*, 2001, p. 60

Ethio-Eritrean War (1998-2000) that diverted the attention of the government to issues of maintaining national security<sup>11</sup>. Apart from the war, the process was also stalled by political and bureaucratic procedures<sup>12</sup>.

## 2. Structure of the Commission

The Commission is an independent autonomous body accountable to Parliament, and is composed of a Chief Commissioner, a Deputy Chief Commissioner and a Commissioner for Children and Women, and other commissioners as may be deemed necessary, and the necessary personnel structured under different sections<sup>13</sup>. The Commission set up six branch offices in different parts of the country, commencing their operations in 2011<sup>14</sup>. The opening of branch offices will enable the Commission to have a degree of proximity, albeit small, to people living in different corners of the country.

The establishment legislation provides almost all the guarantees of independence of the Commission in terms of allocation of funding, appointment, dismissal of and immunities for its officials<sup>15</sup>. It appears in theory that there exists no problem with the enabling Proclamation as far as the independence of the Commission is concerned<sup>16</sup>. Arguably, it seems to fully comply with the requirements of the Paris Principles regarding the independence of NHRIs<sup>17</sup>.

---

<sup>11</sup>Ethiopian Human Rights Commission, 'Strategic Plan for the Ethiopian Human Rights Commission 2006-2011', Prepared by the *Office of the Team of International Consultants* in collaboration with the *Justice for All and Prison Fellowship Ethiopia*, 2006, p. 47

<sup>12</sup> World Bank, Ethiopia: *Legal and Judicial Sector Assessment*, 2004, p. 32

<sup>13</sup> See Articles 3 and 8 of the *Proclamation*. To execute functions entrusted to it, the Commission is structured in to seven sections under the guidance of the Chief Commissioner. They include sections on Human Rights Training and Education(in charge of promotional works), Human Rights Investigation(tasked to investigate complaints of human rights violations), Human Rights Monitoring( deals with external monitoring of government institutions), Information and Communication( responsible for networking with government and NGOs, local and international), Monitoring and Evaluation( mandated to carry out internal monitoring and evaluation of the performance of the Commission) Finance, Procurement and Property Administration, and Human Resource Development(both in charge of routine financial and administrative works). There are some sub-sections under the sections. For instance, Arbitration Centre is under Human Rights Investigation and Research and Documentation Centre is under Human Rights Monitoring section.

<sup>14</sup> Hawassa, Bahr Dar, Mekele, Gambella and Jijiga, and Jimma are cities where branch offices have been set up. Seven more branch offices will be established shortly. See the Ethiopian Human Rights Commission, Bulletin, Vol. 1, No. 05, 2011, p. 2

<sup>15</sup> For instance, the Proclamation provides that the budget of the Commission is to be drawn and submitted to the parliament by itself (Article 19(2)). The recruitment procedures also appear to guarantee the independent recruitment of its officials. Once appointed, the commissioners have a guaranteed term of office for five years and may not be removed from office except for grounds specified in the *Proclamation* (Article 35 of the proclamation). Other guarantees of independence in the form of immunities to the officials of the Commission, the authority of the Commission to recruit, and employ staff of the Commission are provided under the legislation. See Articles 19 and 35 of the *Proclamation*.

<sup>16</sup> Abdo, supra note 4, *op. cit.*, p. 34

<sup>17</sup>The section 'composition and guarantees of independence' of Paris Principles deals with the composition and guarantees of independence'. Most importantly, it gives due regard to the independence of NHRIs and the importance of pluralist representation. To secure independence, it recommends a few mechanisms regarding financial autonomy and secure term of office for members of NHRIs.

Nevertheless, a mere compliance with the essential requirements of independence does not in itself warrant the effectiveness of the Commission. The issue is thus whether the officials appointed to run it are, in practice, truly independent of party politics and the executive given the fact that the country did not, to a large extent, have institutions that were and are capable of functioning free from the influence of the government in power<sup>18</sup>. It is owing to such concerns that scepticism was raised, at the very inception of the Commission, as regards the independence from the government of the first officials that were appointed to run the Commission<sup>19</sup>.

Although it seems to fully comply with the Paris Principles, the Commission is at present not accredited. The Commission was supposed to submit its application along with requisite documents for accreditation purpose in 2010 but failed to act within a schedule fixed by the *International Coordination Committee of National Human Rights Institutions*<sup>20</sup>.

### 3. Mandate and Power of the Commission

The core functions of the Commission are to promote, protect and monitor human rights (Article 6 of the *Proclamation*). Regarding promotion, the Commission is mandated to educate the public about human rights with a view to raising awareness of and fostering the tradition of respect for human rights, to provide consultancy service on human rights, and to provide opinion on reports submitted by Ethiopia to international human rights monitoring bodies<sup>21</sup>. In relation to protection, it is authorized to investigate, upon complaint or *suo moto*, human rights violations and to propose the revision, enactment of laws and formulation of policies relating to human rights<sup>22</sup>. It also is empowered to have a monitoring role. To this effect, it is granted mandate to ensure that laws, by-laws as well as government decisions do not contravene the human rights guaranteed by the Federal Constitution and to ensure that the human rights and freedoms provided for under the Constitution are respected<sup>23</sup>.

The powers of the Commission are not without limitations. The Commission does not have the power to scrutinize alleged human rights violations pending before the *House of People's Representatives*, the *House of Federation*, or courts of law at any level (Article 7 of the *Proclamation*). Hence, all government institutions and their officials are subject to the investigation of the Commission except those specified under Article 7. It is remarkable that the statute subjected the military, security, and police forces, which frequently are associated with human rights violations in the country, to its power<sup>24</sup>.

---

<sup>18</sup> Abdo, supra note 4, *op. cit.*, p. 34

<sup>19</sup> The Observatory for the Protection of Human Rights, "Ethiopia: Human Rights Defenders under Pressure", *Report: International Fact-Finding Mission*, 2005, p. 18

<sup>20</sup> The Commission's application for accreditation was supposed to be reviewed by the Sub-Committee on the Accreditation in a schedule fixed for accreditation purpose, which was 11-15 October 2010. See the schedule of the Sub-Committee on Accreditation of the International Coordination Committee of National Human Rights Institutions, 2009 (Available at: <http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>). The Commission has until now not submitted application for accreditation.

<sup>21</sup> Sub-articles 3, 6 and 7 of Article 6 of the *Proclamation*

<sup>22</sup> Sub-articles 4 and 5 of Article 6

<sup>23</sup> Sub-articles 1 and 2 of Article 6

<sup>24</sup> Abdo, supra note 4, *op. cit.*, p. 37

The Commission is, by virtue of Articles 6 and 7, granted broad power in promoting, protecting, and monitoring human rights, fulfilling the rule regarding broadness of power prescribed by the Paris Principles.

The rules on filing a complaint to the Commission make it easy for complainants to access the Commission as the Commission can be moved to take action by a complainant in person or by someone on his/her behalf in any language and format<sup>25</sup>. The Commission is given a range of powers to investigate a complaint submitted to it, including the investigative power of subpoena and an on-site visit<sup>26</sup>. It is thus endowed with adequate powers necessary for the examination of a complaint.

The enabling statute gives due emphasis to the settlement of complaints through an amicable way<sup>27</sup>. If this does not work, the Commission shall notify in writing of the remedies it recommends<sup>28</sup>. As is the case with most NHRIs, the Commission is not authorized to pass a binding decision. It is denied the power to initiate prosecution before a court of law to get its recommendation and findings put into effect<sup>29</sup>. The enforcement mechanisms it uses to ensure compliance with its recommendations are to publicize it in annual or special report as may be necessary<sup>30</sup>. Another instrument of enforcement is a criminal sanction. If a person without good cause fails to comply with a recommendation issued by the Commission or fails to offer a reasoned justification for not doing so within three months from receipt of the recommendation, he/she commits a criminal offence and is liable to punishment if found guilty<sup>31</sup>. This penalty places persons subject to the recommendation of the Commission to behave in some way within three months, i.e. to either execute the recommendation or provide reasons for not doing so<sup>32</sup>.

A lack of enforcement power in the form of bringing a case before a court of law affects the effectiveness of the Commission and its credibility. This problem is not unique to Ethiopia. One of the biggest factors leading to a loss of credibility and public legitimacy by NHRIs elsewhere is an inability to give their recommendations the force of law<sup>33</sup>. A common complaint by ordinary

---

<sup>25</sup> A Complaint may be instituted by a person who alleges that his/her right is violated or by his/her spouse, or family member or representative or a third party. A complaint may be lodged, free of charge, in writing, orally or in any other means and may be in the working language of the Commission, which is Amharic, or in any other language See Articles 22(4) and 23 of the *Proclamation*

<sup>26</sup> The Commission is empowered to compel the attendance of witness to give testimony, or force the production of evidence by those in possession of them (Article 25 of the *Proclamation*). The power to conduct an on-site visit is not directly indicated in the legislation but the Commission has been exercising it. The Commission might have derived such power from an open-ended power granted to it to perform activities that will enable it to meet its objectives. See 6(11) of the *Proclamation*.

<sup>27</sup> Article 26(1) of the *Proclamation*

<sup>28</sup> It includes requesting cessation of the act that has given rise to a complaint, or demanding the directive causing complaint rendered inapplicable or calling for injustice done redressed or recommending any appropriate measure. See Article 26(3) of the *Proclamation*

<sup>29</sup> Abdo, supra note 4, *op. cit.*, p. 43

<sup>30</sup> Articles 28 and 39 of the *Proclamation*

<sup>31</sup> The person could face imprisonment from three to five years or a fine from 6000-10000 Ethiopian Birr or both. See Article 41(2) of the *Proclamation*

<sup>32</sup> Abdo, supra note 4, *op. cit.*, p. 43

<sup>33</sup> International Council on Human Rights Policy, *Performance and Legitimacy: National Human Rights Institutions*, Versoix, Switzerland, 2000, p. 92

citizen as well as human rights activists is that an institution that is not capable of enforcing its decision is no more than a window-dressing<sup>34</sup>. This problem is particularly serious where the Ethiopian gives much respect to an office that resorts to coercion to enforce its decision<sup>35</sup>. Absence of the power to take a case to a court creates an impression in the minds of the people that the Commission is not strong enough to get things done<sup>36</sup>.

#### **4. Mandate of the Commission over Economic, Social and Cultural Rights**

Article 6 of the *Proclamation* sets forth the mandate of the Commission, granting it broad power. It does not draw distinction between human rights so far as the mandate of the Commission is concerned. It employs the phrase ‘human rights’, without indicating whether the reference is to civil and political rights only or to both civil and political rights and ESC rights. Interpreting and determining whether the mandate of the Commission covers ESC rights is important because in order to deal with these rights, NHRIs need to consider whether and how its mandate includes those rights and whether and how its mandate extends to all types of perpetrators of them<sup>37</sup>. In addition, it is important to see whether or not the mandate of the Commission is broad enough as required by the Paris Principles.

NHRIs mandates are closely linked to definition of human rights set out in the constitutional and legislative provisions establishing them. To examine whether or not ESC rights fall within the ambit of the Commission’s mandate, one should thus read Article 2 of the *Proclamation* which defines terms, words and phrases used in the context of the *Proclamation*. One of these terms is ‘human rights’, which is defined as including fundamental rights and freedoms recognized under the Constitution of the Federal Democratic Republic of Ethiopia and those enshrined in the international agreements ratified by Ethiopia. As the Federal Constitution provides a limited list of ESC rights under its Article 41 and the country has ratified many international human rights instruments, including the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the mandate of the Commission should cover all human rights.

#### **5. Review of the Practice of the Commission to Enforce Economic, Social and Cultural Rights**

The Commission has been performing a number of activities since its commencement. Promotional and protection activities undertaken by the Commission so far indicates that it has been engaged in dealing ESC rights, albeit in a haphazard manner. The practice also reveals that the attention given to these rights is low compared to civil and political rights.

##### **5.1. Promotion of Economic, Social and Cultural Rights**

---

<sup>34</sup> Ibid

<sup>35</sup> Abdo, supra note 4, *op. cit.*, p. 44

<sup>36</sup> Ibid

<sup>37</sup> Office of the UN High Commissioner for Human Rights, ‘Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions’, Professional Training Series No. 12, UN, New York and Geneva, 2005, p. 34

To materialize its mandate to promote human rights, the Commission has been engaged, since its inception, in activities designed to create general awareness about human rights as well as the role and mandate of the Commission itself. It has been relying on a variety of ways in this regard such as training, TV and radio talk-show, research and publication, moot-court competition, ceremonies and special events, and integration of human rights in primary school. Broadly categorized, the promotional activities focus on three entities: government bodies, individuals and associations, and other entities playing roles in the promotion of human rights, such as the media.

Promotional activities targeting government organs-the executive, parliament and the judiciary-, both at the federal and state levels, are usually carried out through organizing seminars and workshops and usually focus on the their respective roles in enforcing human rights in general and the rights of vulnerable groups such as women, children and people with disabilities, the drawbacks encountered by respective bodies in their bids to enforce human rights and the roles expected of each organ to ameliorate the setbacks<sup>38</sup>. The Commission has also been offering trainings to youth and women associations drawn from the Regional States of the country, the theme of which focus on human rights in general and the rights of women, children and persons with disabilities in particular and the roles of the associations in raising the awareness of their members and the general public regarding the issues<sup>39</sup>. Specific issues raised include discrimination against women and persons with disabilities in employment and access to public services.

One of the workshops organized for the judiciary that has an implication to ESC rights is related to the application of international human rights at the domestic level. The Commission has conducted an important workshop regarding the status of international human rights treaties under Ethiopian legal system and the role of the judiciary to enforce international human rights treaties, including the ICESCR, ratified by the country<sup>40</sup>. This is a commendable move given the fact that the Commission has joined attempt to clarify the ongoing debate among scholars regarding the matter and the fact that the attitude of the judiciary to international human rights treaties and problems in the domestication of the treaties are frequently invoked as hindrances to the application of international human rights treaties by the judiciary<sup>41</sup>. Such endeavour by the Commission could help shape the awareness and understanding of judges for better domestic enforcement of international human rights treaties by courts.

Following the workshop the Commission has taken a concrete step to facilitate the actual implementation of the treaties by the judiciary. It has teamed up with a local NGO, *Action Professional's Association for the People* (APAP), to help parliament ratify international treaties

---

<sup>38</sup> The Ethiopian Human Rights Commission, *Inaugural Report*, 2011, p. 58, See also Annual Report of the Commission, submitted to parliament, 2007, pp. 6-8

<sup>39</sup> Ibid, p. 61, see also Annual Report of the Commission, submitted to Parliament, 2007, pp. 10-11

<sup>40</sup> The Ethiopian Human Rights Commission, Bulletin, Vol. 1, No. 05/03, 2011, pp. 5-6

<sup>41</sup> See Ethiopia's Report submitted to the Human Rights Committee on 28 July 2009, which was considered by the Committee on 22 October 2009, *UN, CCPR/C/ETH/1, 2009*, p. 6; see also Canadian International Development Agency, 'Independence, Transparency and Accountability in the Judiciary of Ethiopia', Prepared by the National Judicial Institute, Canada, 2008, p. 120-122; see also Rakeb Messele, 'Enforcement of Human Rights in Ethiopia', Research Report, APAP, Addis Ababa, 2003, pp. 38-41

in such a way that they can easily be applied by the judiciary and thereby rectify the longstanding obstacle in law-making procedure that impede their application by the judiciary<sup>42</sup>. All international human rights instruments ratified by the country, including the ICESCR, are supposed to go through the proper national law-making procedure to overcome constraints in implementing them at the national level. This will assist in the invocation of international treaties by courts and is significant, especially, for the ESC rights. The invocation by Ethiopian courts of ICESCR is almost non-existent, ascribed to, among others, the widely shared view that these rights are non-justiciable and the constraint in domesticating international human rights instruments<sup>43</sup>. The attempt of the Commission will help overcome these problems and thereby facilitate the domestic application of ICESCR by courts.

In most of the trainings, ESC rights are raised not as a specific subject in itself but as a subject-matter of discussion on general issues of human rights and in the context of the rights of children, women and people with disabilities. The issues touched, albeit in general terms, include their legal nature and the obligations of state and the various means available to implement them<sup>44</sup>. The views expressed in relation to their implementation tend, at times, to emphasize the availability of resources<sup>45</sup>. There is no distinct training session focusing exclusively on specific issues of ESC rights such as the right to food, health and adequate standard of living.

Some of the Commission's promotional activities have been aired on the national TV and Radio, aiming to create general awareness regarding human rights and the Commission<sup>46</sup>. They involve aspects of social and economic rights. For instance, a discussion was made on *Radio Fana* about the rights of children and the fact that female genital mutilation violates human rights principles<sup>47</sup>. A 90 second TV presentation, consisting of 24 different parts, focusing on the role and mandate of Commission, the rights of children, women and people with disabilities, the notion of equality, and the rights of vulnerable groups and affirmative action to be taken to address their problems were aired on the Ethiopian National TV (ETV)<sup>48</sup>. The thrust of such TV

---

<sup>42</sup> See the Annual Report of the Commission, submitted to Parliament, 2008, pp. 10-11; see also the Annual Report of the Commission, 2007, p. 5. Non-publication of full text of ratified international treaties in the local language in the national law reporter is frequently raised as one of the obstacles hampering the application of international treaties by the judiciary.

<sup>43</sup> The invocation of the provisions of international human rights treaties in general to settle disputes is rare, although there are some signs that there is a change in this regard. On few cases in which international human rights are invoked see UN International Human Rights Instruments, 'Core Document Forming the Initial Part of the Report of States Parties: Ethiopia', HRI/CORE/ETH/2008, 2009, p. 40; see also Takele Seboka, 'The Monist-Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia', *Journal of Ethiopian Laws*, Vol. 23, No. 1, 2009, p. 149

<sup>44</sup> One can observe this from a series of workshops organized for members of parliament on general human rights concepts and the role of parliament in the protection of human rights. The training manuals distributed during such workshops raise these issues.

<sup>45</sup> The writer of this article had the privilege to take part in three rounds of training sessions organized for Parliament in 2008- 2009. The experts of the Commission as well as the participants tend to emphasize that the fulfilment of these rights hinges on the availability of resources and the state of development of the country.

<sup>46</sup> Their themes include the rights of children, discrimination made against female children and women in education, property ownership and employment and need to address them through the concerted effort of family, society, government organs and other players to alleviate the problem.

<sup>47</sup> Annual Report of the Commission, 2007, p. 12

<sup>48</sup> Ibid, p. 17; see also the Annual Report of the Commission, 2008, p. 4



presentation is on discrimination against female children, women and persons with disabilities that have been entrenched in family relations, schools, public services and the need to tackle the problems facing these groups through a collaborative effort of the government, the general public and other concerned organs.

A specific activity of the Commission entirely focusing on ESC rights is a moot-court competition, organized annually, involving public and private law schools in the country. The Commission has so far organized four rounds of such competition, all involving specific issues of ESCR rights. The first was specifically on the right to adequate food<sup>49</sup>. It is particularly significant to make the right to food subject to moot court competition given the fact that millions of Ethiopians could not feed themselves and issues of hunger and famine are not seen as human rights matters. The second was specifically devoted to the right to health in which issues including the right to development, the right to clean environment, and environmental protection issues were debated among the participants<sup>50</sup>. This event was aired over the national education TV network to audience in other universities and over the local radio in the place where the event took place<sup>51</sup>. The third was on the rights of Children and adoption of children by foreigners, including issues of trafficking of children under the guise of adoption<sup>52</sup>. The last one is on the right of women and the right to culture<sup>53</sup>.

The organization of a moot-court competition would deepen the understanding of the would-be lawyers about the legal nature of ESC rights and provides grounds for their better protection. Its coverage by the media would also raise the awareness of the general public regarding the rights subject to debate during the competition. The Commission has to keep on organizing such competition and consider including topics such as the right to housing and protection against eviction given the fact that there has been widespread eviction of people from their land and house to give way to investment activities following the recent booming of business activities.

Another significant promotion work by the Commission, in collaboration with UNICEF, is its bid to incorporate the notion of human rights in primary school curriculum. To this end, it has engaged expert consultants who carried out detailed study into the status of and gaps in human rights incorporation in primary school curriculum<sup>54</sup>. After a series of discussion on the finding of the study, the Commission forged an agreement with the *Ministry of Education* to implement a project to adequately reflect human rights in primary education<sup>55</sup>. A pilot project was, as a result, implemented at seventy seven primary schools<sup>56</sup>. The evaluation and monitoring of the pilot project was carried so that the project would be implemented across all primary schools in the

---

<sup>49</sup> The Ethiopian Human Rights Commission, Bulletin, Vol. 1, No. 07/03, 2011, p. 2

<sup>50</sup> Ibid; the Inaugural Report, supra note 38, *op. cit.*, p. 62; see also the Annual Report of the Commission, 2010, p. 12

<sup>51</sup> Inaugural Report, supra note 38, *op. cit.*, p. 62

<sup>52</sup> See the Bulletin of the Commission, , supra note 48, *op. cit.* p. 2

<sup>53</sup> It was organized by the Commission in collaboration with Hawassa University, Hawassa, May 2012

<sup>54</sup> Annual Report of the Commission, 2007, p. 9

<sup>55</sup> Ibid, pp. 9-10

<sup>56</sup> The pilot project includes measures to promote human rights at selected schools, develop an environment friendly to child rights in schools through forming clubs promoting human rights, and distributing materials and brochures that supplement teaching and training materials on civics and ethics. Annual Report of the Commission, 2010, pp. 5-6

country<sup>57</sup>. The attempt to integrate human rights in school has a significant contribution to inculcating human rights in the minds of children and to endeavour to building a human rights culture.

The promotional activities undertaken by the Commission since its inception points to the fact that the Commission has been striving to create general awareness about human rights and the Commission itself. They were not persistent and also lack focus on specific types of rights, including ESC rights, and groups that need primary attention<sup>58</sup>. The Commission has to, instead of general legal nature and state obligations, focus on areas of ESC rights that deserve due attention such as the rights to food and housing and protection against eviction, and the group of people that need utmost attention such as women and people with HIV who often face discrimination in different aspects such as employment, education and access to public services.

The promotional activities undertaken hitherto suffer from shortcomings. The first drawback is that most presentations at training sessions do not make use of real life situation to explain matters at hand. Another one is that they use complex concepts and language. For instance, in discussing the notion of ESC rights, they give due attention to a historical development of these rights by using concepts and language that may not easily be grasped by non-lawyers. It appears that the Commission leaves discretion to trainers to determine a format of the training manuals. The Commission has to put in place guidelines, procedures and formats on how to prepare training presentations and documents so that their substance can easily be comprehended by the audience.

## **5.2. Protection of Economic, Social and Cultural Rights**

In the early days the Commission came into operation, the Commission dealt with few cases and had to reject the bulk of cases submitted to it. This can be attributed to the lack of adequate information regarding the role and mandate of the Commission. That explains why many cases settled by and pending before courts were brought to the attention of the Commission in the first two years of its operation<sup>59</sup>. There is a steady growth in the number of cases submitted to the Commission over the years following the Commission's promotion campaigns to raise awareness about itself and human rights<sup>60</sup>. However, the number of cases submitted to the Commission annually since its inception is rather small given the sheer size of the country<sup>61</sup>.

---

<sup>57</sup> Annual Report of the Commission, 2010, p. 6

<sup>58</sup> The Commission moves from one issue to another and appear to lack persistent approach. For instance, it raises issues regarding violence against women and switches to the trafficking or discrimination against women. This may be because the Commission is too ambitious to address all issues related to women at a time. In its draft strategic plan, the Commission conceded that its promotional activities did not take into account the rights of vulnerable groups, especially the rights of people living with HIV. See the Ethiopian Human Rights Commission, Draft Strategic Plan for 2011-2016, p. 26

<sup>59</sup> Inaugural Report, *supra* note 38, *op. cit.*, p. 87; Annual Report of the Commission, 2007, p. 18; see UNDP, 'Strengthening the Capacity of the Ethiopian Human Rights Commission, Project for 2008-2012', 2008, p. 9

<sup>60</sup> Inaugural Report, *supra* note 38, *op. cit.*, p. 91, see also Annual Report of the Commission, 2010, pp. 14-15

<sup>61</sup> Ethiopia is a vast country and its number of population is over 84 million. The statistics from the annual reports so far released shows that the Commission has received a little over 5000 complaints since 2004. This may have to do with the sheer size of the country accompanied by a lack of branch offices until recently or the inadequacy of promotion works by the Commission and/or a lack of awareness regarding the Commission's function. A sustained

As per the *Proclamation*, the Commission is supposed to settle complaints through amicable means. While the Commission strives to achieve this, most cases tend to end up with adjudication. The recent statistics indicates a marked increase in the number of cases submitted to the Commission. More than 900 complaints submitted to the Commission before the end of last Ethiopian fiscal year represents an even greater increase over the 150 cases received in its first year of operation<sup>62</sup>. The number of cases handled by the Commission that relate to ESC rights is rather low compared to civil and political rights. For instance, out of 206 complaints the Commission received in a period from 11 September 2011 to 20 January 2012, only 50 cases relate to ESC rights<sup>63</sup>.

The bulk of cases submitted to the Commission are over issues of land, property, security of person, freedom of movement, condition of detention in prisons and police stations, conflict, and labour. The majority of cases on ESC rights brought to the Commission relate to labour matters, including the right to form trade union and the majority of them were instituted by employees of private firms, religions bodies and aid organizations<sup>64</sup>. Some cases in the context of conflict between ethnic groups over territory and resource, and in the context of ethnic group's quest for self-rule were lodged to the Commission.

A considerable number of labour cases have been settled by negotiation between the parties to complaints<sup>65</sup>. Some labour complaints have been settled informally through exchange of communication with the respondents before a formal investigation into their merits was undertaken<sup>66</sup>. Some have been settled by adjudication. Examples of labour cases settled by adjudication, amicable means, and informal mechanism are given below.

1. In a complaint submitted to the Commission, Mezemer Abebe<sup>67</sup>, an employee of *Tero Church* in Addis Ababa, alleged that he was discharged from his work unfairly- without committing any act or fault contrary to the law and his duty. He claimed that he was a victim of a malicious plan designed by his immediate boss and the manager of all churches within the confines of the city, as a result of which he was discharged and his salary and entitlements were suspended. The Commission served notice on the manager of churches in the city, who failed to show up for five weeks. Because of the non-appearance of the respondent, the Commission's investigator paid a visit to the office of the manager in person and discussed about the complaint, after which the manager submitted a written reply to the complaint. The Commission tried to reconcile the two parties but owing to a hostile relation between them, the Commission decided to adjudicate the

---

promotion by the Commission about itself and the newly opened branches offices and the likely increase in the number of such offices in the near future will possibly increase the number of complaints coming to the Commission.

<sup>62</sup> Interview with Terefe Wondimu, Senior Investigator, Compliant Investigation Department of the Commission (16 July, 2012, Addis Ababa, Ethiopia). The Ethiopian fiscal year runs from early July (around 8 July) in one year to around 8 July the next year.

<sup>63</sup> This is drawn from the statistics kept by the Registrar of Complaints Investigations Department

<sup>64</sup> See Inaugural Report, *supra* note 38, *op. cit.*, p. 89

<sup>65</sup> Interview with Girma Wolde and Terefe Woldimu, Senior Investigators, and Muluye Wolelwa, Head of Human Rights Investigation (15 September 2011, Addis Ababa, Ethiopia)

<sup>66</sup> Ibid

<sup>67</sup> Complaint was filed on 17 March 2007 and decided by the Commission on 31 May 2007

case. The Commission found out, following the hearing of the testimony of witness and evidences presented by the Complainant and written and oral arguments made by the employer, that the dismissal was a revenge action rooted in prior grudges and did not meet the requirements of the Labour Code <sup>68</sup>. The Commission recommended the immediate and unconditional reinstatement of the complainant and payment of his salary and benefits withheld during his absence from work because of medical treatment and following the dismissal. It also called upon the employer to refrain from similar acts that could violate the rights of employees in similar conditions.

It is interesting to note that the Commission made an elaborate analysis of the facts of the case and provided a well-articulated argument to justify its recommendation based on specific reference to the relevant provisions of the law, mirroring the approach of courts in making decisions.

2. Dr. Hana Tujuba<sup>69</sup> was a paediatrician at *BJM Hospital* and handed in a five-day notice to quit her job. Upon realizing that she should instead submit a one-month prior notice, as per the law, she recanted her earlier notice and submitted new one. The hospital refused to honor her request for discharge and withheld her salary and benefits for the month of the notice. She applied to the Commission requesting the release of her salary and other benefits and issuance of letter of release by her employer. The hospital defended its action on the ground that the first notice was too short and that it was a manifestation of bad faith to limit the opportunity of the Hospital to employ someone in her place and thereby harm its interest, and that it tried to settle the problem peacefully but she failed to accept all suggestions made. The Commission facilitated the reconciliation between the parties and eventually the two parties hammered out a negotiated agreement, signed by the two parties and the Commission. The Hospital agreed to pay 10000 Birr as salary and compensation and also agreed to issue a letter of release specifically indicating her year of service, amount of salary, and conduct during her work at the hospital.

The respondent took a swift action to comply with the agreement brokered by the Commission. The format and content of the agreement shows that it is a well-crafted document and meets the requirement of a compromise agreement under the Civil Procedure Code of Ethiopia, making it easy to enforce before courts of law in case one party fails to abide by its terms.

3. Rahel Abebe and Zerihun Ajiberw<sup>70</sup> applied to resign from their job at Live Ethiopian Association. They were suspended and denied their salary and benefits of the month they submitted notice of release. They claimed that they were defamed as a letter indicating that they both failed to live up to their professional duty was placed in their file after their request for release. Following the initiative and arrangement by the Commission, the two parties agreed to settle the complaint peacefully and finally signed the terms of agreement binding them in which the employer agreed to pay their salary and benefits and to withdraw a letter putting their professional integrity into question kept in their file, and to issue a letter of release.

---

<sup>68</sup> In another case, Mezember Abebe got his complaint for the payment of some benefits upheld against the employer and was seeking the enforcement of the decision made by the Labor Relations Board

<sup>69</sup> The complaint was settled by negotiation on 1 June 2011

<sup>70</sup> The case was settled by negotiation in December 2009

The approach used in this case is the same as the above case settled by the agreement of the parties initiated by the Commission.

4. In another case, an employee of NGO was discharged while on maternal leave and another person was employed on her post. After the end of her leave, she went to her job, only to learn that she was no more an employee of the organization. She submitted a complaint to the Commission, asking for reinstatement to her job. After exchange of opinion between the Commission and the organization, the employer admitted that it committed an error of judgment in employing somebody on her post and agreed to reinstate her<sup>71</sup>.

The Commission has used an informal means to settle this complaint- a mere telephone call resolved the applicant's plea. The Commission has relied on this means in a number of other cases by often using a 'threat' to take action against the respondents, a reference to bringing a legal action against parties before courts, which the Commission does not actually possess<sup>72</sup>. In other cases, it has used an informal means of communication and a sort of clandestine mode of engagement with the government officials to resolve complaints, which turned out to be successful in, for instance, getting people subject to arbitrary detention released<sup>73</sup>. Although reliance on informal means and non-confrontational approach may help complainants get remedies, it goes against the very nature of the Commission. The Commission is a formal state institution and an excessive utilization of informal means to have things done might eclipse its formal enforcement powers by which it is ultimately judged by the general public, affecting its credibility. In other words, people evaluate the Commission by the extent to which it has used its formal powers (naming and shaming campaigns using the media and parliament) to produce results.

## **6. Assessment of the Practice of the Commission Regarding Economic, Social and Cultural Rights**

Since the Commission started its operation, it has largely been preoccupied with civil and political rights as discerned from its annual report, publication, and the number of cases it has disposed of.

---

<sup>71</sup> Interview with Muluye Wolelaw, Head of the Investigation Department( 18 September 2011, Addis Ababa, Ethiopia)

<sup>72</sup> Interview With Terefe Wondimu and Girma Wolde, Senior Investigators, Complaint investigation Department, (January 19, 2012, Addis Ababa)

<sup>73</sup> i.e., the Commission has relied on informal method of conveying information to government officials through means such as informal contact person instead of written letter or publication of information through the media or other means. One case where such method proved successful is worth mentioning here. Many people were arrested following clashes between security forces of the government and the *Ogaden National Liberation Front* (ONLF), an insurgent group claiming to fight for the self-determination of the *Ogaden* people in the *Somali National Regional State* of Ethiopia. The Commission inspected the conditions of their handling in different detention facilities. Many were not charged nor were they brought to courts for long time. Believing that the detention was arbitrary, the Commission's investigators used informal contact persons to bring the matter to the attention of senior officials of the Federal government and those of the Somali Regional State. Apparently, the senior officials were unaware of the gravity of the problem at the local level and ordered the launching of investigation into the condition of the detention. The informal means used by the Commission initiated the investigation by the executive bodies and resulted in the release of many of the detainees and some were brought to justice.

The annual report of NHRIs is a vital public document that provides not only a regular audit of the government's performance but also an account of what the institutions have done<sup>74</sup>. It is critically important that all the findings and recommendations of NHRIs be publicly available though, among others, annual report<sup>75</sup>.

The Commission has so far submitted to Parliament at least six annual reports since it started its function. The reports do not give a specific section to the types of rights the Commission dealt with. However, it is apparent from each annual report that ESC rights do not enjoy a prominent status. The first report fails to address issues of these rights altogether, probably owing to the circumstances at the very inception of the Commission<sup>76</sup>. In the subsequent reports, ESC rights are raised in broad terms in the context of the rights of women, children, or persons with disability<sup>77</sup>. The rights to health, education, adequate standard of living and social security have not been addressed by the annual reports released so far. The same applies to the Commission's online and print publication. The Commission's bulletin, a quarterly publication, features brief notes on the rights of persons with disabilities, women, and children but fails to carry notes on ESC rights *per se*.

The attitude of the Commission to ESC rights might be a reflection of the manner in which these rights are entrenched in the Federal Constitution. With the exception of labour rights and Article 41 that lumped together few of these rights, the Constitution focuses almost exclusively on civil and political rights. It does not enshrine the rights to education, health, shelter, and food as justiciable rights but put them under the section 'National Policy Principles', which are non-justiciable<sup>78</sup>. The orientation of the Commission is reminiscent of the approach of the constitution despite the fact that the inspiration for the human rights provisions of the Constitution stems from the international human rights instruments<sup>79</sup>. It also may have to do with the fact that the human rights discourse in the country tends to focus more on civil and political rights. The treatment of ESC rights by the Commission may be a manifestation of the discourse on human rights.

---

<sup>74</sup> ICHRP, *supra* note 33, *op. cit.*, p. 7.

<sup>75</sup> *Ibid.*

<sup>76</sup> A preoccupation of the Commission to hire staff and organize its office and the problem it had to contend with right at the start of its operation may explain this. The Commission had only three commissioners and few staff and at that time and had given most of its time on promoting itself but faced the violence following the 2005 election. The Commission was forced to pay attention to deal with the indiscriminate detention of thousands of people in detention facilities in different parts of the country.

<sup>77</sup> The annual report of 2010 contains a paragraph on the state of vulnerable groups that covers issues of violence and sexual harassment against children and women, and children without parents. It raises the protection of the rights of these groups in broad terms. It merely stated that the Commission had held discussion with the police and justice organs on the implementation of laws that protect the rights of these groups and that the Commission had taken note of the fact the implementation of the law protecting them suffered from setback. See the Annual Report of the Commission, 2010-2011, p. 11

<sup>78</sup> See Article 85 of the Federal Constitution of Ethiopia. Article 41 of the Constitution guarantees the right to pursue a chosen field of profession, the right to a means of livelihood, and equality in accessing public services (i. e., protection against discrimination in accessing these services).

<sup>79</sup> The constitution enjoins the use of international human rights instruments for the interpretation of its provisions on human rights (Article 13(2) of the Federal constitution). Upon ratification, international human rights instruments form an integral part of the law of the land (Article 9(4) of the Federal constitution).

The quality of annual reports has improved over the years. Yet, they give due regard to the administration of and bureaucratic processes within the Commission and the promotional works undertaken by the Commission, paying little attention to its protection roles<sup>80</sup>. The section of annual reports on protection role deals with mere statistics as regards the number of cases filed, rejected or transferred to other organ or to next fiscal year without offering a single exemplary case handled by the Commission. In addition, there is generally no mention of issues in relation to compliance with recommendations issued by the Commission and the reaction of government organs or officials.

A lack of publication of cases decided by Commission has shielded its internal workings from public scrutiny. Publication of cases serves as a promotion in itself. It also helps to raise awareness about what the Commission is doing to protect human rights and help build up its public credibility, and thereby spur potential complaints to lodge their complaints to it. In its draft strategic plan, the Commission has realized the problem in this regard and planned to publish, among others, its finding and recommendations<sup>81</sup>.

The other short-coming with regard to the protection role of the Commission is the absence of *suo moto* investigation into important human rights issues such as poverty and hunger, forced eviction and their impact on human rights, and gender equity. Activities envisaged by the Commission in its new strategic plan do not specifically refer to these matters<sup>82</sup>. A few *suo moto* investigations it already carried out relate mainly to the allegation of killings of individuals in conflict situations and/or isolated incident and do not pertain to matters of ESC rights. Even it fails to launch its own investigation into the trends of cases that have been submitted to it. Despite the fact that most of the ESC rights the Commission dealt with so far relate to labour matters, the Commission has not undertaken an investigation into these matters to see the pattern of the problems with a view to offering a wide-ranging administrative, policy and legal recommendation to prevent such problems.

The success of the Commission lies in promotion of rights. It has given due emphasis to efforts to promote itself as well as the notion of human rights in general. This is a commendable move given a wide-spread ignorance of human rights and lack of a human rights culture in the country. Such settings make the Commission's promotional activities significant. A vigorous campaign to change an entrenched attitude and practice, both in the general public and government institutions, is important to change the human rights situation in the country. Such endeavour has a positive effect not only on the better protection of human rights but also on the process of political liberalization in the medium to long term<sup>83</sup>.

---

<sup>80</sup> For instance, the Annual Report of 2010-2011 discussed details of promotional works in thirteen page while protection activities are summarize in only two pages. See the Annual Report of the Commission, 2011, pp. 2-14 on promotional works, and pp. 14-15 on protection role.

<sup>81</sup> See the Draft Strategic Plan, supra note 57, *op. cit.*, p. 52

<sup>82</sup> In its draft strategic plan for 2011-2016, the Commission plans to undertake public inquiry and research but fails to mentions the areas subject to the inquiry and research. See draft strategic plan of the Commission, *op. cit.*, pp.56-57

<sup>83</sup> Sarah Vaughan and Kjelit Tronvoll, *The Culture of Power in Contemporary Ethiopian Political Life*, SIDA Studies No. 10, 2005, p. 70

In connection with its promotional works related to ESC rights, there appears to be a lack of consistency as regards issues of resource availability to realize these rights. Occasionally, some experts of the Commission are of the view that resources and the level of economic development are decisive factors for the fulfilment of these rights.

Another success story of the commission is its attempt to reach out to the poor people. The Commission has been providing legal counsel and aid to poor litigants despite the fact that the enabling statute makes no provision for such scheme. To achieve this, it has teamed up with local NGOs and universities in different parts of the country and provided financial support to many centres established in different parts of the country for such purpose. This is a remarkable move as it helps poor litigants to access justice and thereby defend their rights.

In relation to its protection roles, the Commission has also achieved some success in handling ESC rights involving non-government entities and requiring individual remedies. The success is in politically non-sensitive and non-controversial areas such as labour, land and property disputes. Remedies indicated in its recommendation over such cases were at times quickly executed<sup>84</sup>. However, the Commission tends to avoid cases involving political and sensitive issues. Where issues involved in a complaint have political overtones, the Commission seems to disclaim competence to handle them. One case signalling fear harboured by the Commission to examine such sensitive matter is instructive.

The Commission rejected, for want of jurisdiction, an interesting complaint filed by a representative of people living in a protected forest that could have given rise to important environmental and ESC rights issues<sup>85</sup>. The Complaint was instituted by Tamiru Ambello who was assigned by the people living in the forest to act on their behalf to challenge the decision of the *Gambella Regional State*, which decided to give the forest area to an investor for the purpose of tea farming<sup>86</sup>. They alleged that they were not consulted before the decision was made and also that the clearing of the forest to give way to tea farming would have a devastating impact on the environment as well as their livelihood based on the forest. Their attempt to get remedy of injunction from the local administration and Regional government institutions resulted in vain.

Upon learning that the investor has already cleared a sizeable chunk of the forest, they submitted a written request to the President of the country to intervene in the matter and help them halt the clearing of the forest. Sympathetic with their case, the President asked the Commission to intervene and investigate their complaint. They submitted their complaint to the Commission along with the letter of the President and other supporting documents. The investigation team at the Commission accepted the case but needed, before launching investigation, a professional

---

<sup>84</sup> It refrains from politically sensitive areas by disclaiming competence. Whenever it manages to deal with them, it often relies on informal means that produces results in some cases. However, in its dealing with cases triggered by conflict, most of its recommendations have not been complied with or there were no follow-up scheme to ensure their implementation. Obviously, such cases require a structural and political orders and will, making them difficult to implement within a short period of time.

<sup>85</sup> The facts of the complaint and the informal decision to reject the case was narrated by the investigator, who wants to remain anonymous, involved in handling the case. I had the privilege to look at the file of the complaint, including the documents produced by the complainant and the correspondence between the investigator and others.

<sup>86</sup> The complaint was submitted to the Commission in May 2011



advice on environmental issues at stake in the case and put their request informally to some experts and local organizations working on environmental issues such as *Pact Ethiopia* and *Forum for Environment*. The experts and the organizations asked the investigators to make a formal request, i.e. to produce a written letter of the Commission. The leadership of the Commission refused to issue a formal letter on the ground that the case does not fall within the purview of the Commission and ordered a referral of the case to the Ombudsman Institute, which in its turn remanded the case back to the Commission. In the end, both institutions failed to deal with the case.

There is no provision that precludes the Commission, and the Ombudsman as well, from investigating such complaint as it is not considered by courts and other institutions<sup>87</sup>. Perhaps, the leadership of the Commission, as well as that of the Ombudsman, feels that the issues involved in the case pits them against the policy of the government to transfer large-scale farming land to investors on the one hand and allegations of the so called ‘land-grabbing’ for which the Ethiopian government has been criticized by experts and international organizations on the other<sup>88</sup>. The government appears to be touchy on matters of allocation of massive swathes of land to foreign investors. It has always been denying allegation that ‘land-grabbing’ has taken place and argues that its action goes in line with its bid for economic development and to ensure food self-sufficiency and technology transfer<sup>89</sup>. The Commission seems to realize the sensitivities involved in the case and decided not to confront the government by investigating the matter, constituting a self-imposed restraint. As an institution set up by law to rectify the lapses and faults of the government related to human rights issues, the Commission should not shy away from dealing with such matters. The obligation to protect implies an active role on the part of the state and its institutions to ensure that policies and actions taken to effect government programs are carried out in conformity with human rights norms in general and social and economic rights in particular.

## Concluding Remarks

The Commission was set as part of a constitutional reform program spurred by a regime change in the early 1990s. The enabling statute grants broad power to the Commission and guarantee its independence. Over the last eight years, the Commission has been struggling to promote, protect and monitor human rights. Although the Commission is mandated to enforce social and economic rights as the analysis of its mandate indicates, the lion’s share of its practice so far relates to civil and political rights. In its practice regarding ESC rights, the Commission is beset with many shortcomings and obstacles which hinder its effective functioning in the field. This is

---

<sup>87</sup> Although not detailed, there is a general procedural rule to avoid potential overlap of jurisdiction between the Commission and the Institute. Article 29 of the *Proclamation* provides that the two institutions should settle overlap of jurisdiction by mutual conflict and in case this does not work, the institution to which a complaint is lodged first shall have the power to see it.

<sup>88</sup> For instance, see the study funded by the Oxfam International on land grabbing in Africa in which Ethiopia is indicated as one of the counties where ‘land-grabbing’ is taking place and its impact on small farmers and women and the violation of human rights involved in it. See Tinyade Kachika, *Land Grabbing in Africa: A Review of the Impacts and the Possible Policy Response*, 2011

<sup>89</sup> For details see Dessalegn Rahmato, ‘Land to Investors: Large-Scale Land Transfers in Ethiopia’ , Forum for Social Studies, Addis Ababa, 2011

evident in its promotional and complaint handling process. It has been undertaking promotional and protection activities that generally deal with ESC rights rather indirectly.

Its promotional activities give attention, albeit not a focused one, to some aspects of ESC rights and lack persistent approach. The Commission appears to be too ambitious to deal with all human rights at a time. The Commission needs to prioritize its promotional activities and identify specific groups of people to be targeted and specific types of rights that need its primary attention. Thus instead of focusing on the general issues such as the historical development of and the obligations of states to enforce these rights, the Commission should gear its attention to specific rights and groups.

The Commission should have a clear stance on issues of resource availability and the level of economic development on the one hand and the fulfilment of obligations imposed by ESC rights on the other in order to pursue a consistent approach on this matter in its activities. To realize this, the Commission has to get a broad understanding of the legal nature of ESC rights and the relevant state obligations.

At present, the Commission is too reactive and not proactive as it deals with human rights in isolation, i.e., based on complaints submitted to it. It needs to be proactive to launch investigation in important areas of ESC rights such as issues of a chronic hunger and famine afflicting millions of people, forced eviction of people from land and house and its impact on human rights, and groups of people facing persistent discrimination. It should conduct research on these issues and present its findings to the general public to spark debate on them and thereby direct attention to these problems.

The Commission is not transparent, especially in relation to its protection function. It ought to open itself up to the public by publishing its exemplary cases and recommendations.

With all its imperfection, the Commission is better than none. Its establishment may be viewed as a positive trend given the institutional shortfall in the enforcement of human rights in the country. It signifies a step towards better promotion and protection of human rights.

## References

### Books and Articles

Abdo, Mohammed, 'The Ethiopian Human Rights Commission: Challenges Confronting Its Effective Functioning', *Chinese Year Book of Human Rights*, Vol. 4, 2006

Abdo, Mohammed, 'Challenges Facing the New Ethiopian Ombudsman Institution', *International Ombudsman Yearbook*, Vol. 6, 2002

Canadian International Development Agency, 'Independence, Transparency and Accountability in the Judiciary of Ethiopia', Prepared by the National Judicial Institute, Canada, 2008

Dessalegn Rahmato, 'Land to Investors: Large-Scale Land Transfers in Ethiopia', Forum for Social Studies, Addis Ababa, 2011

Human Rights Watch, *Protectors or Pretenders?: Government Human Rights Commissions in Africa*, 2001

International Council on Human Rights Policy, *Performance and Legitimacy: National Human Rights Institutions*, Versoix, Switzerland, 2000

Kachika, Tinyade, *Land Grabbing in Africa: A Review of the Impacts and the Possible Policy Response*, 2011

Lindsnaes, Birgit and Lone Lindholt, L. 'National Human Rights Institutions-Standard Setting and Achievements' in B. Lindsnaes, L. Lindholt and C. Yigen, eds., *National Human Rights Institutions: Articles and Working Papers*, the Danish Centre for Human Rights, 2001

Messele, Rakeb, 'Enforcement of Human Rights in Ethiopia', Research Report, APAP, Addis Ababa, 2003

Observatory for the Protection of Human Rights, 'Ethiopia: Human Rights Defenders under Pressure', Report: International Fact-Finding Mission, 2005

Office of the UN High Commissioner for Human Rights, 'Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions', Professional Training Series No. 12, UN, New York and Geneva, 2005

UNDP, 'Strengthening the Capacity of the Ethiopian Human Rights Commission, Project for 2008-2012', 2008

Vaughan, Sarah, and Tronvoll, Kjell, *The Culture of Power in Contemporary Ethiopian Political Life*, SIDA Studies No. 10, 2005

World Bank, Ethiopia: *Legal and Judicial Sector Assessment*, 2004

### **Reports and Documents of the Commission**

Ethiopian Human Rights Commission, Draft Strategic Plan, 20011-2016

Ethiopian Human Rights Commission, Bulletin of the Human Rights Commission, Vol. 1, No. 05, 2011

Ethiopian Human Rights Commission, Bulletin, Vol. 1, No. 07/03, 2011

Ethiopian Human Rights Commission, Inaugural Report, 2011

Ethiopian Human Rights Commission, Annual Report, 2010

Ethiopian Human Rights Commission, Annual Report, 2008

Ethiopian Human Rights Commission, Annual Report, 2007

Ethiopian Human Rights Commission, ‘Strategic Plan for the Ethiopian Human Rights Commission 2006-2011’, Prepared by the *Office of the Team of International Consultants* in collaboration with the *Justice for All and Prison Fellowship Ethiopia*, 2006

### **Laws and other sources**

A Proclamation to Provide for the Establishment of the Human Rights Commission, Proclamation No. 210/2000, Federal Negarit Gazeta No. 40, 6<sup>th</sup> Year, 4 July, 2000

A Proclamation to Provide for the Establishment of the Ombudsman Institute, Proclamation No. 210/2000, Federal Negarit Gazeta No. 41, 6<sup>th</sup> Year, 4 July, 2000

The 1995 Constitution of the Federal Democratic Republic of Ethiopia

The 1965 Civil Procedure Code of Ethiopia

Ethiopia’s Report submitted to the Human Rights Committee on 28 July 2009, UN, CCPR/C/ETH/1, 2009

Report of the Sub-Committee on Accreditation of the International Coordination Committee of National Human Rights Institutions 2009 (Available at: <http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>)